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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>08 September 2009</u>.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-3,5-14,16-20,29-31 and 33* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-3,5-14,16-20,29-31 and 33* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Status of Claims:

Claims 1-3, 5-14, 16-20, 29-31 and 33 are pending in this Office Action.

Claims 1, 10, 13, 14, and 29 are amended.

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on

09/08/2009 has been entered.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3.   Claims 1-3, 5-14, 16-20, 29-31 and 33 are rejected under 35 U.S.C. 102(e) as

being anticipated by Donaldson et al. (US Patent 7,272,232 B1) hereinafter Donaldson.

Claim 1

Donaldson teaches in a mobile client device, a method of operation comprising

(Column 2 lines 27-28, "Thus, a need exists for a method of prioritizing and

balancing simultaneous audio outputs in a handheld device"):

first providing, by the mobile client device, a first audio signal at a first audio

volume level to a user, the first audio volume level being selectable by the user

(Column 5 lines 5-10, "FIG. 2 shows a system embodiment of the invention

involving two sources, audio source A 200 and audio source B 201");

determining by the mobile client device, the first audio volume level at which the

mobile first audio signal is being provided to the user by the mobile client device

(Column 5 lines 31-34, "Referring again to FIG. 2, a priority logic unit 202 is

coupled to audio source A 200 and audio source B 201. At a minimum, the priority

logic unit 202 is capable of sensing the amplitude and/or presence of each audio

source"); and

while providing said first audio signal to the user at the first audio volume level,

providing, by the mobile client device, to the user a second audio signal at a second

audio volume level, the second audio volume level being variable controlled by the

mobile client device based on said first audio volume level **(Column 5 lines 37-44,**

"The priority logic unit 202 is coupled to variable attenuator/amplifier 203 and is

also coupled to variable attenuator/amplifier 204. The priority logic unit 202 is

furnished with a set of prioritization rules allowing it to control the amount of gain

or attenuation that is applied to audio source A 200 by variable

attenuator/amplifier 203, and the amount of gain or attenuation that is applied to

audio source B 201 by variable attenuator/amplifier 204") and the second audio

volume level being non-intrusively lower than the first audio volume level initially

(Column 5 lines 45-46, "There are many possible prioritization rules that can be

used to prioritize the two audio sources" and Column 6 lines 12-16, "For example,

if source A is a high priority source (e.g. a telephone ring or other alert tone) and

source B is a lower priority source (e.g. a music program) then the sound

management system may lower the volume on source B, combine with source A

and output the result"); and

while providing the first and second audio signals, incrementally increasing, by

the mobile client device, the second audio volume level from the initial non-intrusive

lower volume level to a discernable volume level higher than the first audio volume level

(Column 2 lines 58-62, "Upon sensing an increase in amplitude of source B above

a preset threshold level, the attenuation or gain of one or both sources is

adjusted such that a new signal ratio is established between the two sources").

Claim 2

Donaldson teaches wherein said determining comprises the mobile client device

determining a first audio volume level at which the mobile client device is being utilized

by a user for a first audio signal corresponding to music associated with output of at

least one of an MP3 player and a radio included with the mobile client device **(Column**

3 lines 50-63, "In addition to received signals, the handheld device 100 of FIG. 1A

may also be capable of generating signal events such as an alarm associated

with a clock, timer, thermometer, or phone battery monitor. The device may also

have internal audio sources such as speech or music stored in digital or analog

form. Fixed or removable media may include magnetic, optical, and integrated

circuit storage media. The magnetic media may be used for analog or digital

storage. Alternatively, the speech or music material may be stored on a digital

storage medium such as flash memory or random access memory (RAM). Speech

or music may be stored in a variety of formats such as MP3 for music or Adaptive

Differential Pulse Code Modulation (ADPCM) for speech").

Claim 3

Donaldson teaches wherein said second providing comprises the mobile client

device providing the second audio signal corresponding to a ring tone associated alert

for at least a selected one from the group consisting of an incoming call, a received

indication of a text message, a received indication of a voicemail message, a calendar

alert, and a wireless mobile phone system utilities warning **(Column 5 lines 10-14,**

"Audio source A 200 and audio source B 201 may be either a signal event source

or a continuous source. A signal event source is an audio signal of short duration

such as a telephone ring or an alarm").

Claim 5

Donaldson teaches wherein said incrementally increasing comprises

incrementally increasing the second audio volume level to a pre-determined audio

volume level limit above which hearing damage is likely to occur **(Column 2 lines 58-**

62, "Upon sensing an increase in amplitude of source B above a preset threshold

level, the attenuation or gain of one or both sources is adjusted such that a new

signal ratio is established between the two sources" and Column 6 lines 49-52,

"the radio program volume may always be reduced if the user is using a

headphone output in order to prevent possible discomfort from too much

amplification of the telephone").

Claim 6

Donaldson teaches wherein said incrementally increasing comprises

incrementally increasing the second audio volume level by a selected one of a constant

increment and an increasing increment **(Column 5 lines 37-44, "The priority logic**

unit 202 is coupled to variable attenuator/amplifier 203 and is also coupled to

variable attenuator/amplifier 204. The priority logic unit 202 is furnished with a set

of prioritization rules allowing it to control the amount of gain or attenuation that

is applied to audio source A 200 by variable attenuator/amplifier 203, and the

amount of gain or attenuation that is applied to audio source B 201 by variable

attenuator/amplifier 204").

Claim 7

Donaldson teaches wherein said determining comprises the mobile client device

determining the first audio volume level measured as an audio power level **(Column 5**

lines 50-54, "For each possible audio source pair in the handheld device, the

prioritization rules establish the relative gain applied to the sources. the absolute

levels may be set in relation to a fixed decibel level, or it may be referenced to the

level or presence of one of the sources").

Claim 8

Donaldson teaches wherein said determining a comprises the mobile client

device determining the first audio volume level measured as at least one of volts, watts,

and decibels **(Column 5 lines 50-54, "For each possible audio source pair in the**

handheld device, the prioritization rules establish the relative gain applied to the

sources. the absolute levels may be set in relation to a fixed decibel level, or it

may be referenced to the level or presence of one of the sources").

Claim 9

Donaldson teaches wherein said first and second providing comprises the mobile

client device mixing said first and second audio signals **(Column 5 lines 62-64, "The**

output of variable attenuator/amplifier 203 and variable attenuator/amplifier 204

are coupled to a mixer 205 that combines the two signals into a single output

206").

Claim 10

Donaldson teaches the wireless mobile phone comprising **(Column 2 lines 27-**

28, "Thus, a need exists for a method of prioritizing and balancing simultaneous

audio outputs in a handheld device"):

a first audio resource, the first audio resource equipped to provide a first audio

signal at a first audio volume level at which the mobile phone is being utilized by a user

for the first audio signal, the first audio volume level being selectable by the user

(Column 5 lines 5-10, "FIG. 2 shows a system embodiment of the invention

involving two sources, audio source A 200 and audio source B 201"); and

a second audio resource, wherein the second audio resource is equipped to

determine the first audio level at which the first audio signal is being provided to the

user by the first audio resource **(Column 5 lines 31-34, "Referring again to FIG. 2, a**

priority logic unit 202 is coupled to audio source A 200 and audio source B 201.

At a minimum, the priority logic unit 202 is capable of sensing the amplitude

and/or presence of each audio source"), and

provide a second audio signal at a second audio volume level to the user while

the mobile phone is being utilized by the user for the first audio signal at the first audio

volume level, the second audio volume level being variably controlled by the second

audio resource based on said first audio volume level **(Column 5 lines 37-44, "The**

priority logic unit 202 is coupled to variable attenuator/amplifier 203 and is also

coupled to variable attenuator/amplifier 204. The priority logic unit 202 is

furnished with a set of prioritization rules allowing it to control the amount of gain

or attenuation that is applied to audio source A 200 by variable

attenuator/amplifier 203, and the amount of gain or attenuation that is applied to

audio source B 201 by variable attenuator/amplifier 204") and the second audio

volume level being non-intrusively lower than the first audio volume level initially

(Column 5 lines 45-46, "There are many possible prioritization rules that can be

used to prioritize the two audio sources" and Column 6 lines 12-16, "For example,

if source A is a high priority source (e.g. a telephone ring or other alert tone) and

source B is a lower priority source (e.g. a music program) then the sound

management system may lower the volume on source B, combine with source A

and output the result"),

while the first and second audio signals are being provided, incrementally

increase the second audio volume level from the initial non-intrusive volume level to a

discernable volume level higher than the first audio volume level **(Column 2 lines 58-**

62, "Upon sensing an increase in amplitude of source B above a preset threshold

level, the attenuation or gain of one or both sources is adjusted such that a new

signal ratio is established between the two sources"), and terminate the second

audio signal preventing the second audio signal from intruding on the first audio signal

in response to a user action **(Column 5 lines 16-20, "A continuous source is an**

audio source with a typically longer duration than a signal event source, and is

usually not dependent upon an external event, but is selected arbitrarily by the

user").

Claim 11

Donaldson teaches wherein the first audio resource comprises at least one of an

MP3 player and a radio **(Column 3 lines 50-63, "In addition to received signals, the**

handheld device 100 of FIG. 1A may also be capable of generating signal events

such as an alarm associated with a clock, timer, thermometer, or phone battery

monitor. The device may also have internal audio sources such as speech or

music stored in digital or analog form. Fixed or removable media may include

magnetic, optical, and integrated circuit storage media. The magnetic media may

be used for analog or digital storage. Alternatively, the speech or music material

may be stored on a digital storage medium such as flash memory or random

access memory (RAM). Speech or music may be stored in a variety of formats

such as MP3 for music or Adaptive Differential Pulse Code Modulation (ADPCM)

for speech").

Claim 12

Donaldson teaches wherein the second audio resource comprises an audio

resource equipped to receive a delivery of a message alert to the user **(Column 6 lines**

12-16, "For example, if source A is a high priority source (e.g. a telephone ring or

other alert tone) and source B is a lower priority source (e.g. a music program)

then the sound management system may lower the volume on source B, combine

with source A and output the result").

Claim 13

Donaldson teaches wherein the <u>second</u> audio resource comprises a ring tone

generator **(Column 5 lines 10-14, "Audio source A 200 and audio source B 201**

may be either a signal event source or a continuous source. A signal event

source is an audio signal of short duration such as a telephone ring or an

alarm").

Claim 14

Donaldson teaches wherein the <u>second</u> audio resource is equipped to receive a

delivery of a message alert for at least a selected one from the group consisting of an

incoming call, a received indication of a text message, a received indication of a

voicemail message, a calendar alert, and a wireless mobile phone system utilities

warning **(Column 5 lines 10-14, "Audio source A 200 and audio source B 201 may be either a signal event source or a continuous source. A signal event source is an audio signal of short duration such as a telephone ring or an alarm")**.

Claim 16

Donaldson teaches wherein the second audio resource is equipped to incrementally increase the second audio volume level to a pre-determined audio volume level limit above which hearing damage is likely to occur **(Column 2 lines 58-62, "Upon sensing an increase in amplitude of source B above a preset threshold level, the attenuation or gain of one or both sources is adjusted such that a new signal ratio is established between the two sources" and Column 6 lines 49-52, "the radio program volume may always be reduced if the user is using a headphone output in order to prevent possible discomfort from too much amplification of the telephone")**.

Claim 17

Donaldson teaches wherein second audio resource is equipped to incrementally increase the second audio volume level by a selected one of a constant increment and an increasing increment **(Column 5 lines 37-44, "The priority logic unit 202 is coupled to variable attenuator/amplifier 203 and is also coupled to variable attenuator/amplifier 204. The priority logic unit 202 is furnished with a set of prioritization rules allowing it to control the amount of gain or attenuation that is applied to audio source A 200 by variable attenuator/amplifier 203, and the**

**amount of gain or attenuation that is applied to audio source B 201 by variable
attenuator/amplifier 204").**

Claim 18

Donaldson teaches wherein the first and second audio volume levels are
measured as audio power levels **(Column 5 lines 50-54, "For each possible audio
source pair in the handheld device, the prioritization rules establish the relative
gain applied to the sources. the absolute levels may be set in relation to a fixed
decibel level, or it may be referenced to the level or presence of one of the
sources").**

Claim 19

Donaldson teaches wherein the audio power levels are measured in at least one
of volts, watts, and decibels **(Column 5 lines 50-54, "For each possible audio source
pair in the handheld device, the prioritization rules establish the relative gain
applied to the sources. the absolute levels may be set in relation to a fixed
decibel level, or it may be referenced to the level or presence of one of the
sources").**

Claim 20

Donaldson teaches further comprising a mixer, the mixer equipped to mix the first
and second audio signals **(Column 5 lines 62-64, "The output of variable
attenuator/amplifier 203 and variable attenuator/amplifier 204 are coupled to a
mixer 205 that combines the two signals into a single output 206").**

Claim 29

Donaldson teaches the mobile client device comprising **(Column 2 lines 27-28,**

"Thus, a need exists for a method of prioritizing and balancing simultaneous

audio outputs in a handheld device"):

a storage medium having stored therein a plurality of programming instructions,

which when executed, the instructions cause the mobile client device to **(Column 4**

lines 4-11, "Computer system 100 includes a central processor 101 coupled with

the bus 99 for processing information and instructions, a volatile memory 102

(e.g., random access memory RAM) coupled with the bus 99 for storing static

information and instructions for the central processor 101 and a non-volatile

memory 103 (e.g., read only memory ROM) coupled with the bus 99 for storing

static information and instructions for the processor 101") first provide a primary

audio signal at a first audio volume to a user, the primary audio volume level being

selectable by the user **(Column 5 lines 5-10, "FIG. 2 shows a system embodiment of**

the invention involving two sources, audio source A 200 and audio source B

201"),

determine the primary audio volume level at which the primary audio signal is

being provided to the user **(Column 5 lines 31-34, "Referring again to FIG. 2, a**

priority logic unit 202 is coupled to audio source A 200 and audio source B 201.

At a minimum, the priority logic unit 202 is capable of sensing the amplitude

and/or presence of each audio source"), and

while said primary audio signal is being provided to the user at the first audio

volume level, provide a secondary audio signal at a second audio volume level to the

user, <u>the second audio volume level being variably controlled by the mobile client</u>

<u>device based on said first audio volume level</u> **(Column 5 lines 37-44, "The priority**

logic unit 202 is coupled to variable attenuator/amplifier 203 and is also coupled

to variable attenuator/amplifier 204. The priority logic unit 202 is furnished with a

set of prioritization rules allowing it to control the amount of gain or attenuation

that is applied to audio source A 200 by variable attenuator/amplifier 203, and the

amount of gain or attenuation that is applied to audio source B 201 by variable

attenuator/amplifier 204") <u>and</u> the second audio volume level <u>being</u> non-intrusively

lower than the first audio volume level initially **(Column 5 lines 45-46, "There are**

many possible prioritization rules that can be used to prioritize the two audio

sources" and Column 6 lines 12-16, "For example, if source A is a high priority

source (e.g. a telephone ring or other alert tone) and source B is a lower priority

source (e.g. a music program) then the sound management system may lower the

volume on source B, combine with source A and output the result"), and

  <u>while</u> the mobile client device provides the first and secondary audio signals,

incrementally increase the secondary audio volume level from the initial non-intrusive

volume level to a discernable volume level higher than the first audio volume level

(Column 2 lines 58-62, "Upon sensing an increase in amplitude of source B above

a preset threshold level, the attenuation or gain of one or both sources is

adjusted such that a new signal ratio is established between the two sources");

and

a processor coupled to the storage medium to execute the programming

instructions **(Column 4 lines 4-11, "Computer system 100 includes a central**

processor 101 coupled with the bus 99 for processing information and

instructions").

Claim 30

Donaldson teaches wherein the primary audio signal corresponds to music

associated with output of at least one of an MP3 player and a radio included with the

mobile client device **(Column 3 lines 50-63, "In addition to received signals, the**

handheld device 100 of FIG. 1A may also be capable of generating signal events

such as an alarm associated with a clock, timer, thermometer, or phone battery

monitor. The device may also have internal audio sources such as speech or

music stored in digital or analog form. Fixed or removable media may include

magnetic, optical, and integrated circuit storage media. The magnetic media may

be used for analog or digital storage. Alternatively, the speech or music material

may be stored on a digital storage medium such as flash memory or random

access memory (RAM). Speech or music may be stored in a variety of formats

such as MP3 for music or Adaptive Differential Pulse Code Modulation (ADPCM)

for speech").

Claim 31

Donaldson teaches wherein the secondary audio signal corresponds to a ring

tone associated alert for at least a selected one from the group consisting of an

incoming call, a received indication of a text message, a received indication of a

voicemail message, a calendar alert, and a wireless mobile phone system utilities

warning, and the programming instructions are further configured to terminate the

secondary audio signal preventing the secondary audio signal from intruding on the

primary audio signal in response to an user action **(Column 5 lines 10-14, "Audio**

source A 200 and audio source B 201 may be either a signal event source or a

continuous source. A signal event source is an audio signal of short duration

such as a telephone ring or an alarm").

Claim 33
Donaldson teaches wherein the primary audio volume level is measured as an

audio power level **(Column 5 lines 50-54, "For each possible audio source pair in**

the handheld device, the prioritization rules establish the relative gain applied to

the sources. the absolute levels may be set in relation to a fixed decibel level, or it

may be referenced to the level or presence of one of the sources").

Response to Arguments

4.   Applicant's arguments with respect to claims 1-3, 5-14, 16-20, 29-31 and 33 have

been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to FARHAD ALI whose telephone number is (571)270-

1920. The examiner can normally be reached on Monday thru Friday, 7:30am to

5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Jeffrey C. Pwu can be reached on (571) 272-6798. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Farhad Ali/
Examiner, Art Unit 2446

/Jeffrey Pwu/
Supervisory Patent Examiner, Art Unit 2446